

Ex Parte                    )  
                                      )  
Ernest Lopez                )

Affidavit of Ernest Lopez

Before me personally appeared Ernest Lopez, who, after being by me duly sworn, stated the following under oath:

1. My name is Ernest Lopez, and I am the petitioner in this habeas petition.
2. In April 2003, I was convicted of sexually assaulting Isis Vas, who was six months old. In the punishment phase, the prosecutors claimed that I caused Isis' death by shaking. I am now facing capital murder charges as a result of Isis' death. I have refused all plea bargains because I did not harm Isis in any way.

Initial Relationship with Dr. Vas.

3. Dr. Veronica Vas was my wife's ob/gyn, and she delivered our children, Cody, who was nearly 3 at the time of Isis' death, and Sienna, who was 5 ½ months.
4. When my wife, DeAnn, was pregnant with Sienna, I sometimes went with her to her ob/gyn appointments. When I was there, Dr. Vas complained about her nanny, who she said did not look after her children properly. During one of the visits, Dr. Vas was told that her nanny and the children were in the reception area. Dr. Vas brought the children into the examination room and later said something like, "see what I mean?" To me, however, the children looked okay. At least they were dressed, which was often not the case when Dr. Vas brought the children to us after her nanny left.

Daycare Arrangements

5. In August, my wife began looking after Dr. Vas' children. She mostly looked after the baby, Isis, because the two older children spent a great deal of time with their father, Dr. Shelton.
6. When I first saw Isis, I thought she was a boy. She didn't have much hair, she was just wearing a diaper, and, compared to our own children, she was frail-looking, almost thin. She always slept a lot more than our daughter, Sienna, and she had projectile vomiting. One of the first times I saw Isis, she threw up her formula, with the formula shooting straight across for some distance. I had never seen anything like that before. Dr. Vas said she had eaten too much, but it didn't seem normal to me. This happened several more times after we started looking after the children.
7. Isis was a very sweet baby, and when she first came she would smile and laugh. She seemed so little and vulnerable, and I felt sorry for her because her father



- didn't want to have anything to do with her. She wasn't lively, like other babies, and she cried more than our children. Other babies her age would grab toys, but Isis was not as curious. She mostly liked to play with her hands, waving them in front of her, and she had a favorite stuffed toy, a bird. I called her my little bird because she looked like a bird herself, very small and frail.
8. At first, I was almost in awe of Dr. Vas because she was a doctor. Although the children seemed neglected when they first came to our house, I thought it was because the nanny hadn't taken proper care of them. Later, I wondered why Dr. Vas didn't take better care of them. Often, she brought the children to our house wearing only diapers. By then, Alex was 3, Emily was almost 2, and Isis was just 3 months. We therefore dressed Dr. Vas' children in our own children's clothes. This didn't bother me since my parents always taught us to share with others, but it surprised me that a doctor's children wouldn't have clothes.
  9. Not long after DeAnn began babysitting Dr. Vas' children, Dr. Vas called and asked us to come to her house because the battery on her van was dead. She said that the battery was dead because the kids had been watching a movie in the van. This was sometime in August, when it was still hot. When we got to Dr. Vas' house, the children were in the van, strapped in. DeAnn and Dr. Vas took the kids in the house and ordered pizza, and I tried to re-start the van. I worked on it for about two hours but could not get it started, and it finally had to be towed. I always remembered this incident because it didn't seem right for the children to be strapped in the van on a hot day.
  10. Dr. Vas' children didn't seem very healthy. Isis was very small and often sick. Her bottom was sometimes almost crusty, like an old rash. Emily had a constantly running nose and a scab on her nose that didn't seem to heal. All three of Dr. Vas' children had diaper rashes.
  11. Emily seemed needy, and often wanted her blanket or her mommy. Alex was very bright and spoke well for his age. He knew the names of all the animals, and he asked good questions. He asked me once what I did, and I told him I was a mechanic and I fixed things. Alex liked to talk about hunting, and he asked me if I could fix broken arrows. He was very sharp, and I enjoyed him. Sometimes Cody looked left out when Alex and I were talking since he was about six months younger than Alex and slower to talk.
  12. Although Alex was very intelligent, he was also very aggressive and much rougher than Cody. One time, he made a lasso out of an extension cord for the vacuum cleaner and was roping the other kids. Another time, when Isis was lying on her back, Alex had grabbed her by the hands, with her head up, and was shaking her roughly. He was playing but it was much too rough for a baby. I told him to put her down *right now* and he dropped her. Because Alex tended to be aggressive, he needed a lot of supervision.



13. Dr. Vas often stayed at our house for days at a time, leaving only to go to work. When she was at our house, she slept on the living room floor. She usually put Isis on a couch. The two older children slept on the floor beside her.
14. When Dr. Vas was at the house, she didn't spend much time with the children or help with their care. All three of Dr. Vas' children were in diapers, but I only saw Dr. Vas change a diaper once. That time, Emily was sick and whiney, and Dr. Vas started to change her diaper. When she got partway through changing the diaper, she started to shake Emily by her legs violently, saying "I can't do this anymore," and walked out of the house. At the time, I assumed she was under stress because she was in a custody battle with Dr. Shelton. DeAnn and I looked at each other, and DeAnn went over and finished changing the diaper.
15. Another time, I was home for lunch when Dr. Vas came back after some type of legal proceeding. She said that, after the proceeding, her lawyer told her something like, "if you went to court today, you'd probably lose those kids." Dr. Vas was ranting and raving about Dr. Shelton and everyone else. I went over and put my hand on her shoulder and said that I didn't know what she was going through but I was sorry. She became very rude and stormed out of the house. Dr. Vas later apologized to DeAnn, but she never apologized to me.
16. Since this all happened, some people have said it was odd that we kept Dr. Vas' children so much and let Dr. Vas sleep at our house. However, at the time, we felt sorry for them. Dr. Vas always seemed to be stressed out because she felt that everyone was "out to get her," even the other doctors. I felt especially sorry for Isis because she didn't have a father and Dr. Vas didn't have time for her. I was raised in a family that always took in kids who needed help, and I thought we should help Dr. Vas and her children if we could. Dr. Vas also paid well, and the money was helpful. It was never a long-term commitment since Dr. Vas was moving to San Antonio to fulfill her Navy obligations.

#### Dr. Vas' Personal Relationships

17. I did not like Dr. Vas' attitude towards sex and relationships, particularly with men. Sometimes Dr. Vas would talk about her sex life when I was present, which I thought was inappropriate. Other times, she would talk to DeAnn, and DeAnn would tell me some of the things she said.
18. Dr. Vas told both of us that she met Isis' father, Dr. Miller, on Tuesdays and Thursdays, and they would drink a bottle of wine and have sex. However, Dr. Miller wouldn't have anything to do with Isis. This bothered me a lot because I come from a very close family. When I finally asked Dr. Vas how she could have sex with a man who wouldn't have a relationship with his own daughter, she didn't respond.



19. I didn't like babysitting for Isis when Dr. Vas was meeting Dr. Miller because I thought it was tacky and I didn't think we should be involved. Dr. Vas said that if Isis was at the house when Dr. Miller came over, Dr. Miller didn't want to hold her and they would have sex while Isis was crying in another room.
20. DeAnn once asked Dr. Vas if she should ask Dr. Miller for child support for Isis. Dr. Vas said that if she tried to get child support, Dr. Miller's wife said they would file for custody.
21. Sometime in September, Dr. Vas started visiting another boyfriend, Steve. After one visit, Dr. Vas was crying in our kitchen, and she asked "who's going to want me with all of this baggage?" At first I didn't know what she was talking about, but she was pointing at her children. I told her that any man who loved her would also want to look after her children. Starting in September, I heard quite a bit about Dr. Vas' relationship with Steve. I understood that Dr. Vas wanted Steve to give up another girlfriend, and that Steve wanted Dr. Vas to give up her kids.
22. Dr. Vas made many other strange comments about sex. For example, DeAnn told me that Dr. Vas asked if she could borrow me and asked if my brother Sabian was available. Sabian told me that Dr. Vas had flashed him when he was at our house. DeAnn told me that Dr. Vas said she had met a guy on a plane and had gone home with him and his friends. Dr. Vas told me one time that she and DeAnn had decided to be lesbians. I took it as a joke, but I never liked her attitude and was very surprised that a doctor would talk like this.

#### Dr. Vas house and car

23. I only saw Dr. Vas' house once or twice, but I was surprised that it was so dirty. Her car, a brand new Ford van, was also filthy. When I cleaned out her van for her, there were jars of old baby food, bottles with old formula, and dirty diapers everywhere. There were also two or three uncashed paychecks under the floor board. Another time, I found at least \$50, in \$5 or \$10 bills and coins. I gave it to Dr. Vas, but she told me to keep it because I had cleaned the van.

#### September

24. In late August or September, Dr. Vas' father, Charles, came to town. When he was in town, we didn't see Dr. Vas or her children. It was my understanding that her father looked after all the children when he was in town. Mr. Vas came to town once or twice in August or September, and kept the kids for at least one week, and possibly two.
25. In September, Emily had a birthday party at Chuck E. Cheese's. When I came home, DeAnn was running late, so I told her to go ahead and meet Dr. Vas at Chuck E. Cheese's with the older kids, and I would bring Sienna and Isis after I had a shower. When I was getting ready, I heard Isis crying and found her on the



floor by the couch. I told Dr. Vas about it when I got to Chuck E. Cheese's so she could check to make sure she was okay. One of Dr. Vas' friends, Pat Turner, was there, too. Dr. Vas checked Isis' head and said she was okay. During the party, Dr. Vas complained to DeAnn and me several times about Pat Turner and Mrs. Smith, an older lady who had also taken care of Dr. Vas' children.

26. Pat Turner was very fond and protective of Isis, and she looked at me as if she was angry with me on and off throughout the party. I didn't know why she had this reaction since I don't think I had met her before. Looking back, Dr. Vas may have told Ms. Turner the same type of things about us that she told us about her former nanny, Dr. Shelton and others.

#### October

27. In October, I didn't see Dr. Vas or the children for about three weeks since DeAnn and I had gone to Dallas on the weekend of the 6<sup>th</sup> (after my father's birthday party) and Mr. Vas was in town from about the time we came back until October 25<sup>th</sup>.
28. DeAnn and I were supposed to leave Isis with Pat Turner on October 6<sup>th</sup> when we left for Dallas. Pat lived across town from us, but she wasn't home when we got there. After we waited for quite awhile, we went back home. We then got a message saying that we should take Isis to Pat at her work at the stockyards, which were near our home. I don't recall who gave us the message.
29. When Pat got Isis, she lifted her arm up and let it fall. It fell a little unnaturally. We hadn't noticed this before, but Isis had been sick and cranky for several days. DeAnn also showed Pat a little prescription bottle with some medicine that Dr. Vas had told her to give to Isis. The bottle had been for one of Sienna's prescriptions, but it didn't have any of Sienna's medicine in it. I understood that Dr. Vas had put in baby aspirin or something like that.

#### Wednesday, October 25

30. When I came home from work on Wednesday, October 25<sup>th</sup>, Isis was lying on her stomach, crying and fussy. When I picked her up, I said something like, "Oh my God, what happened to her?" because she had ugly bumps all over her face, especially on her forehead, nose and neck. There was even one in the corner of her eye.
31. The bumps were about the size of bb's. They were raised and red with a black center, almost like there was dried blood under the skin. It also looked like there was some yellow pus around the edges. DeAnn told me that Dr. Vas said they were some kind of bites (maybe flea or spider bites) and that Isis had gotten them when she was sleeping with her father in the daybed in Dr. Vas' living room. Dr. Vas later told me that they looked better and were less pussy than on Monday.



32. When I held Isis after picking her up, I saw some redness in her left eye, almost like it was blood shot. You couldn't see the redness when she was looking straight ahead, but as I was holding her she looked over towards DeAnn's voice, and I could see a line of red in her eye. I showed it to DeAnn.
33. That evening, when I changed Isis' diaper, she had weird colored stool, mixed green and black. She was also breathing oddly, almost gasping, as if she couldn't catch her breath. It didn't sound like the colds my own children have had – it sounded more like she was having trouble getting her breath.
34. In the night, Isis was crying, and I got up with her. I gave her to Dr. Vas, and DeAnn also got up. I got a bottle for Isis, but she wouldn't eat. Dr. Vas said she was going to call her pediatrician, but she said she couldn't remember her phone number. I think we gave her a phone book, but she still didn't call. Later, we saw bruises on Isis' chest. Dr. Vas said she didn't want to take Isis to the hospital because they might think she had been abused.
35. The marks on Isis' face worried me the most because they didn't look right to me. However, Dr. Vas said she was okay, and I didn't think I was in a position to doubt a doctor, particularly my wife's doctor. If Isis had been my own child, I would have taken her to the hospital because of the spots, fever and not eating.

#### Thursday

36. On Thursday I went to work, and I believe I talked to almost everyone at work about Isis' sickness and all the marks. I know that I asked Becky Hand, the office manager, about them because she has a medical background and I thought that she might know what they were. Becky couldn't really tell from the description, but she thought she might be able to tell better if she saw Isis. When I talked to DeAnn, I suggested that she bring Isis by the office so that Becky could look at her. However, DeAnn was relying on Dr. Vas, who said Isis was okay.
37. After work on Thursday, I picked up my oldest daughter Nikki, and we went to my parents for dinner. After dinner, Nikki spent time with my mother while my father and I watched wrestling. When I got back, Dr. Vas was already at the house and Isis was sleeping on the sofa.

#### Friday

38. On Friday, something woke me up in the night, and I went to the window and saw that Dr. Vas' car was gone. This was around 4 a.m., so I went back to bed.
39. In the morning, I covered Isis with a blanket and fixed her a bottle before leaving for work. I also talked to Becky Hand again. She said that if Isis didn't improve, I should insist that Dr. Vas take her to a doctor.



40. At lunch, I called to say that I wasn't coming back in the afternoon. By that time, Isis and Emily were both sick, and I stayed home to help DeAnn with the kids. Isis was cranky, so DeAnn asked me to put her down for a nap. When I did, she held onto my finger and wouldn't let go. Every time I tried to leave, she would wake up and grab my finger harder, so I finally had a nap, too. DeAnn and I were both pretty tired by then since we hadn't much sleep for the past two nights.
41. Dr. Vas came by in the afternoon to check on the kids before leaving for Michigan to see Steve, and she asked me if she should go to Michigan. I didn't know what to say. She then said she was going, and she hopped up and left. I went after her because she hadn't left a note authorizing us to get medical care for the kids, but when I asked her for a note she said no, we didn't need one because the kids would be fine.
42. Shortly after Dr. Vas left, I went to buy pants since I had a part in a church play that evening. I also picked up my older daughter, Nikki, who was spending the weekend with us. DeAnn kept the kids while I was gone.
43. When I got back that night, Isis was sleeping by the armrest on the loveseat. I believe she was covered with a blanket. Usually DeAnn put pillows around Isis to make sure she was wedged in and wouldn't fall off. Dr. Vas never did that, and she didn't usually cover her, either. I helped DeAnn put the rest of the kids to bed, and I lay on the couch to watch television for a bit. Sienna was in her carseat in the corner between the loveseat and the couch.
44. Sometime in the night, I woke up when I heard Isis crying and Sienna whimpering. There wasn't much light, but I could see that Isis wasn't on the sofa. When I turned on the light, I saw Isis lying beside the carseat, as if she had rolled off the couch and fallen on Sienna, and then rolled off onto the floor. I was concerned that she might have hit her head on the corner of the carseat, but she seemed okay. There weren't any pillows, so I'm assuming that Isis wasn't wedged in that night.
45. Before putting Isis back to sleep, I gave her some decongestant in juice since she was still having trouble breathing. She was also smelly, so I changed her diaper. The stool was dark and sticky, and I had to clean her private parts well. Some of the stool had gone up into her vaginal area, and I almost had to scoop it out because it was so sticky. After I cleaned her up, I fixed Isis a bed on a sleeping bag beside the couch so that she wouldn't roll off the couch again.

#### Saturday

46. In the morning around seven, I gave Isis a breathing treatment with the nebulizer. Dr. Vas had said to use Cody's medicine to help with her breathing. I think Isis also had a breathing treatment the night before.



47. DeAnn woke me up about ten because she was taking Nikki shopping to buy a few things for the family pictures that were being taken that afternoon. I told her that I put Isis on the floor because she had fallen off the loveseat in the night and that I thought she might have hit her head. DeAnn checked Isis' head, but she didn't feel anything much, maybe just a little bump. Isis then went back to sleep.
48. When DeAnn left for shopping, she told me that Dr. Vas had said she would call at 10:30 to talk to Alex. I thought this was odd since DeAnn had told me she had also called the night before. Usually, Dr. Vas never called to check on the children, at least when I was home.
49. Dr. Vas called a little while after DeAnn left. I told her that Isis was still having trouble breathing, but she didn't seem to want to talk about it and asked to talk to Alex. After she talked to Alex, I took the phone, thinking that I would talk to her again, but the line was dead.
50. When Alex was on the phone with Dr. Vas, Isis was in the baby swing. I tried to give her a bottle, but she wouldn't eat and the formula dribbled out. She was also irritable and unsettled. Since she smelled like spoiled milk, I decided to give her a bath. I had told DeAnn I would give her a bath since DeAnn's sister was going to look after Alex, Emily and Isis during the family pictures that afternoon.
51. I took Isis to the children's bedroom, put her in the crib and took off her nightie and diaper. The diaper was messy and had a few rust colored spots. Since I was going to give her a bath and the diaper wasn't very messy, I just wiped her off with the diaper. I set up the baby bath and went to the kitchen to check on the older kids.
52. After putting the diaper in the trash, tidying the kitchen a bit and looking after the older kids, I went back to give Isis her bath. I had probably been gone about ten minutes. When I returned, Isis was limp and her legs looked blue. I slapped her face and rear end, and laid her down and listened to her breath. It seemed like her heart was beating fast, but she wasn't breathing. I went to the bathroom and splashed her with the water in the baby bath and shook her a little bit. I also tried to clear her airways with a bulb syringe in case something was stuck in her throat, but only some mucous-like substance, maybe a little bloody, came out.
53. When I still wasn't getting any response, I started CPR and called 911. The 911 operator told me to put Isis on her side. When I pushed on her, sticky stool and something that looked like a hemorrhoid came out. I followed the operator's instructions and answered their questions until the firemen came. The older children were excited about the fire truck, but I tried to keep them out of the way.
54. After the firemen took over, I called Dr. Vas, told her what had happened, and said she should come back as soon as she could. She gave me the pediatrician's



phone number right away, rattling it off the top of her head, as if she had it memorized. She told me to call the pediatrician and have her meet the firemen at the hospital. I called, but I think I got an answering service. I don't know if the pediatrician came to the hospital.

#### Hospital

55. At the hospital, Officer Taylor asked me many questions about Isis' condition, and I told him most of the things that had happened in the past few days. He seemed to be listening, and I think he wrote most of them down.
56. Later, Dr. Levy came in and told me that Isis was in bad shape and asked why she hadn't been brought in earlier. He asked questions for about 20 or 30 minutes. I told him about the spider bites, and that Isis wouldn't eat, had breathing problems, and had a hard time swallowing since coming to the house on Wednesday. However, he wasn't interested in anything that happened before the hour or two before I called 911. Dr. Levy slouched on the couch when he talked to me and was very arrogant, almost as if he was trying to intimidate me.
57. Detective Moore also questioned me. In court he said that he read me my rights before taking my statement, but this is incorrect. Detective Moore wrote out the statement himself because I was too upset to write, and he didn't tell me about the rights until after we had finished.
58. When Detective Moore questioned me, he didn't want to hear anything other than what happened in the hour before Isis came to the hospital. He was very stern, and every time I tried to tell him about the bites or the stool, or anything else that had happened earlier, he would say, "I don't want to hear about that, I only want to hear about from when you woke up to now." He left everything other than what happened in that hour out of my statement. Some of the timing in the statement is also confused. I didn't clean Isis' diaper well when I got her ready for a bath. Since she wasn't very dirty, I just wiped her with the diaper since I was giving her a bath in a few minutes. I cleaned her well when she fell off the couch in the middle of the night.
59. Looking back, it seemed that Detective Moore had made up his mind that I was guilty before we started talking. At one point, he told me that if he found DNA in Isis' diaper, he was going to "smash my a--." He also kept referring to my statement as a confession, but it was not a confession, it was just a description of what I did to try to revive Isis after she stopped breathing.
60. At the hospital, they told me that Isis had a detached retina and a collapsed lung. At some point I also heard about a fractured clavicle, but that may have been later. At the hospital, the police told me that Isis had been sexually assaulted and had brain damage from being shaken to death. They kept asking me questions about what caused these injuries but I couldn't tell them anything because nothing



like that had happened when I was with her. All I could do was tell them about the marks and bruises that she had when she came to our house, and about her sickness before she died.

#### Investigation

61. It never seemed that anyone was interested in figuring out how Isis got bruised or why she died. After I was arrested, I believe that Gary Nabors, a police officer who knew me, went to Rebecca King to offer to help investigate because he felt I was innocent, but Ms. King said something like, "no, I'm going to nail his a--."
62. Jeff Blackburn told us that he had a friend in Houston who knew Dr. Vas and said she had serious issues. I believe that Mr. Campos investigated Dr. Vas and found a lot of problems, and I heard that Dr. Shelton was in a custody fight with Dr. Vas because he felt she was a poor parent and that his kids were not safe with her. None of this came up in the trial.
63. As soon as I was arrested, they took our kids from DeAnn. For the next year, we were in and out of court so DeAnn could keep the kids and I could see them. Some of the meetings were very unpleasant. At one court hearing, a CPS woman mouthed the words "I hate you" at me. At another, CPS hadn't notified Mr. Isern of the hearing. Judge Emerson was furious and told them never to pull that again in his courtroom. At another hearing, Judge Board was going to allow better visitation until Mark Baskett started almost yelling, "do you know the autopsy is in and they found Isis' DNA in his underwear?"
64. Quite a few members of my family testified before the grand jury in June. I asked to testify too so that I could tell them what had happened. At first, I wasn't asked to testify even though Mr. Isern told the District Attorney that I wanted to talk to them.
65. About a month later, I was working in Clarendon, about 90 miles away, as an environmental tech, surveying and looking at soil samples. When I got back to the shop, my boss said that everyone had been looking for me, that they hadn't been able to reach me on the radio, and that I needed to call my wife, my mother and my lawyer. I reached Mr. Isern first, and he said that the grand jury wanted to talk to me that day. David said that he told the district attorney that he didn't know if he could get me there right away since I was often out on jobs, but Rebecca King told him, "if he's not here by 1, it's his a--." By the time I talked to David, it was about 12:10.
66. I just barely had time to change and get to the grand jury room. When Ms. King and Pat Murphy walked in, they looked shocked and almost angry to see me. My sense was that they didn't think I could get there on time, and that they weren't pleased that I had. At the grand jury, the prosecution asked very odd questions. I



understand that I can't talk about what happened in the grand jury room, but I would like to be released from my oath of secrecy so that I can do so.

67. Before the indictment, DeAnn and I and our children lived with my parents. On October 1 or 2, almost a year after Isis died, the Court said that we didn't have to work with CPS anymore. At first, the CPS workers had been very hostile, made nasty comments, and made clear that they thought I was guilty. One of the workers told Nikki's mother, Robin, that she didn't think Robin should let Nikki see me or my parents. By the end, however, the CPS workers were more casual, sometimes showing up in cars with the music blaring. Even so, we were glad to be able to move on with our lives.
68. However, on October 3, I was indicted for sexual assault and capital murder and arrested at my workplace. After the indictment, I wasn't allowed to live with my family even after I was out on bond. DeAnn and the kids had to move back with her sister and I stayed with my parents. I visited with the kids at Family Support Services every Tuesday and Thursday from 4 to 6. After that, DeAnn took the kids to my parents, and DeAnn and I spent some time together. It was very hard, but we communicated a lot by cell phone. By spring, we thought everything was going well, and we were looking at houses to buy.
69. During the trial, Flo Martin of Family Support Services called and said that she couldn't do a supervision over Easter but that Julie was willing to do one even though the office was closed. Julie opened the office and supervised a visit. I thanked her, and she told me that she knew this had been hell for all of us but that she and Ms. Martin had enjoyed their time with us and wanted to do something nice for us during the trial.

#### Representation

70. When I was first arrested, my parents hired David Isern to represent me. David shared an office with Jeff Blackburn, and I understood that Jeff Blackburn would be working with him. At one point, Jeff Blackburn wasn't spending much time on the case because he was busy with the Tulia cases, but he seemed to keep on top of how the case was going. One of Mr. Blackburn's friends had dated one of Dr. Vas' friends, and Mr. Blackburn said that he knew what Dr. Vas was like.
71. When the autopsy came in, Mr. Isern seemed pleased since it seemed to confirm everything we had been saying about the bruises and other marks. Both Mr. Blackburn and Mr. Isern thought it was very important to have experts review the report, and my parents paid \$7,000 to hire experts. Not long after that, Mr. Isern told me he got a good report from Dr. White, but I don't remember seeing the report.
72. After I was indicted, I didn't have any money and my parents had used the rest of the money they took out of my dad's retirement fund to pay for my bond. Since



we couldn't pay for a private attorney, the court appointed Joe Marr Wilson to represent me. It was my understanding that Mr. Wilson was representing me on all of the charges and that Mr. Isern was assisting him.

73. In late 2002, Mr. Isern started asking for more money, once for \$5,000. I didn't understand why since Mr. Isern had told me that the Court would be paying the lawyers' fees and my parents had already paid for the experts. I told Mr. Isern that I thought he and Mr. Wilson were court-appointed and that we didn't have pay, and Mr. Isern said something like, "oh, that's right, forget it."
74. A month or two before the trial, my family and I met with Mr. Wilson and Mr. Isern. We had a lot of questions, but Mr. Wilson didn't seem to want to answer them, and he didn't ask questions. After that, I don't think I saw Mr. Wilson or Mr. Isern again until the Friday before the trial. All in all, I met with Mr. Wilson three or four times outside the courtroom, for no more than an hour total.
75. The Friday before the trial began, I met with Mr. Isern and Mr. Wilson when they called me in to talk about a plea bargain. Mr. Wilson was late, and Mr. Isern and I were waiting for him in Mr. Isern's office when Mr. Isern got a phone call from Dr. Shelton on the speaker phone. I heard Mr. Isern say something like, "so you just left the D.A.'s office." Mr. Isern then asked me to step out. Ten minutes later, he told me I could come back in. When I asked Mr. Isern what the call was about, he told me that Dr. Shelton had just come out of a meeting with the D.A. He said he couldn't tell me what it was about because it was just between him and Dr. Shelton. This struck me as odd since he was my attorney and it seemed obvious that they were talking about my case.
76. When Mr. Wilson came, he said that the D.A. had offered 40 years for both charges. I told him that I wasn't going to take 40 years for something I didn't do. He said that I should call me my family and talk about it. I talked to my wife and my mother, who also said no.
77. The other time I remember seeing Mr. Wilson other than at the trial was on Easter Sunday, after the State presented its case.

#### Trial

78. Sometime around the beginning of the trial, Mr. Campos, the investigator, took me to the side at lunch and said that he had found a sexual assault nurse in Dallas who was willing to testify for me. He seemed really pleased. I don't know what happened, but she never showed up.
79. Mr. Wilson had told me earlier that Elizabeth Johnson, a DNA expert from California, would be testifying. Dr. Johnson was in the courtroom during the State's case but left before testifying. Mr. Wilson didn't tell me why she had left.



80. Mr. Wilson asked me to meet with him at his office on Easter Sunday. He was wearing Hawaiian-type shorts and a golf shirt, and the meeting was very brief. He said that the State had presented its case and it was now our turn. Basically, he said, "this is what we're going to do. Tomorrow we'll call our experts, and we'll take it from there." I understood that Dr. White would testify first thing on Monday morning. We waited and waited, but he never showed up. Finally, I understood that they got him on the telephone. I never did understand what happened, but he didn't testify.
81. Sometimes I asked Mr. Wilson questions, but he never answered me directly. I know that my parents asked questions, too, especially my mother. Later, Mr. Wilson told me that he subpoenaed my parents as witnesses at trial even though he knew he wouldn't be calling them so that they wouldn't "bug him" by asking questions. This bothered me because my mother often asked good questions. For example, at one of the bond reduction hearings, the Court said that I couldn't be around any children. My mother asked David Isern to ask the Judge if I could be around my own children. When he did, the Judge said yes.
82. I didn't like the fact that my family was excluded from the trial but Dr. Vas' fiancée, Steve, was in the courtroom taking notes, especially during DeAnn's testimony.
83. During the trial, Mr. Wilson was very friendly with the prosecutors. Sometimes he would go over and put his arms around Ms. King and Pat Murphy. It felt as if they were having a tea party, and I didn't feel like anyone was representing me.
84. Some of the jurors looked as if they had made up their minds before the trial. One juror, a large, burly man with glasses who was sitting next to the witness chair, made eye contact with me and pointed his index finger in the air when they gave the verdict. I felt that looking at the sexual assault pictures with the big screen really upset some of the jurors, and that they weren't really listening to what anyone else said. It was almost as if they felt they were in a forensic crime show where only the forensic people could know what happened.
85. When the verdict came in, David Isern cried, and I started to cry, too. We hugged each other, and Mr. Isern kept saying he was sorry. Mr. Wilson looked at Mr. Isern and me as if he couldn't figure out what we were doing. Mr. Campos also cried after the verdict. When I went back to the jail, another guard was also almost in tears.
86. I swear under penalty of perjury that I never did anything to harm Isis. I only touched her private parts when changing her diaper or cleaning her, and I never shook her except when I tried to revive her after she stopped breathing. Even then, I did not shake her hard, just enough to try to wake her up.



This concludes my affidavit.

\_\_\_\_\_  
Ernest Lopez

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My commission expires: \_\_\_\_\_

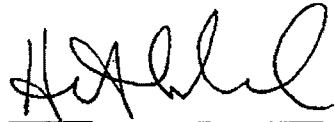


Ex Parte                     )  
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Ernest Lopez                )

Affidavit of Heather Kirkwood

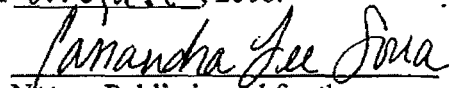
1. My name is Heather Kirkwood. I represent Ernest Lopez in this habeas petition.
2. Mr. Lopez provided the information for a draft affidavit in several in-person and telephone discussions. Approximately two weeks ago, he reviewed the draft affidavit with me in detail by telephone, and I made the requested changes.
3. Mr. Lopez was unable to sign the revised affidavit because he was moved from the Potter County Detention Center in Amarillo, Texas to the Middleton Unit in Abilene shortly before the due date on this habeas petition. Mr. Lopez was unable to send the complete affidavit but did send the attached page, signed but not notarized from the draft affidavit (envelope dated August 1, 2006). The earlier affidavit was accurate but incomplete.
4. As soon as I learned that Mr. Lopez had been moved and would be unable to notarize the affidavit in Amarillo, I arranged for an Abilene attorney to obtain a notarized signature on the affidavit, and also made a backup appointment to see Mr. Lopez in Abilene on August 8, 2006. Mr. Lopez was moved, however, before local counsel or I could meet with him. We do not know Mr. Lopez' present location.
5. I believe that the attached affidavit is accurate and is what Mr. Lopez would testify to in an evidentiary hearing.

I swear under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct. This concludes my affidavit.



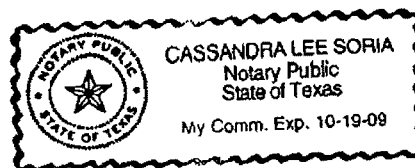
Heather Kirkwood

Subscribed and sworn to before me this 8<sup>th</sup> day of August, 2006.



Notary Public in and for the  
State of Texas

My commission expires: 10-19-09

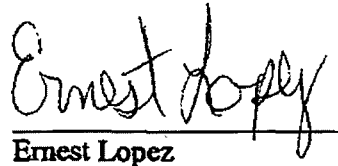




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This concludes my affidavit.

  
Ernest Lopez

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

My commission expires: \_\_\_\_\_